

MR. E. S. McCORD,

of the

Law firm of Kerr and McCord, Fairhaven, Wash.

July 25, 1895.

(Interviewed by Wm. Wakeham and R. Rathbun).

(This law firm represents the Indians at Point Roberts, in their contest against the Alaska Packing Association).

The Indians, I understand, up to last Friday had not caught a single salmon at Point Roberts. The Alaska Co. have caught as high as 55,000 in one day. The Alaska Packing Association does not report correctly the number of fish they take at Point Roberts. They reported 18,000, 20,000 and 25,000 the first 3 days run of salmon, and Elwood tells me that they took 55,000 salmon in one day.

Q. Were they all packed?

A. I guess they are packing their catch

this year. I have known them to throw out 15,000 salmon at one time.

Here is what our evidence shows they have done. The old treaty enacted in 1855. between Governor Stevens and the Indians, by which they were guaranteed their fishery rights, and in consideration thereof they granted all their interest in this section of the country. The Indians fished upon this reef. I have the testimony of a large number of the old men who have been fishing there from their boyhood. This reef is exposed at low tide about half the distance (from the shore), and the Indians constructed channels all through the reef about 50 feet wide, and the way they fished they put in permanent anchors there and buoys. The way they used to make the anchors they would go and cut a tree with a crotch in it. The fish are only on the ebb tide about 3 hours a day. The tide runs against the net, and the current coming from this direction (illustrating) bags the net. They

drop the net down between two long canoes and the Indian at the back end of the net holds the rope that runs in front of the net and the Indians in the other canoes hold the ropes that run at the bottom of the net. These Indians, some way, they have not been able to successfully run these nets. There are 5 or 6 Indians in each canoe now and they haul the net between two canoes. Out on the outer end of this reef they go and cut their channels through the kelp, and they also construct channels out of kelp. The Alaska Packers' Association went in last year and they constructed this lot of traps, all of them made in violation of statute and the Indians went out last year on the point of the reef outside of the nets; then they went to work and drove a lot of piles out there about 100 yards. Their nets were not connected with them, but they drove them and the Indians were practically crowded out. Our statutes provided that these nets in the waters of Puget Sound, that there shall

be left a passage way between them. That law was amended last year. Originally it was a passage way of 800 feet, and the amendment made it 400. When we got an injunction restraining them from locating the nets within 5,000 feet of the reef (illustrating), they (A.P.A.) thought the injunction would be made perpetual by Judge Hanford, and so they located a net out farther and started in to locate this net out here and then started down here and were driving this line of pilings, when I called the attention of the U.S.Circuit Court again to it. They were intending to surround that reef, and at the same time keep their nets just outside of the limit of 5,000 feet. They went in and showed they had \$30,000 invested in the business and that they would sustain a loss of \$50,000 or \$60,000, so Hanford held, as the Alaska Packers' Association was solvent, if the Indians were deprived of their rights on that reef at the fishing season this year they would

have a civil action against the Alaska Packers' Association for damages, and modified the injunction permitting them to maintain that line of traps there.

(The above conversation was given in connection with a chart of Point Robert).

Now the legal phase of the matter is just this:

In 1867, I think, our legislature undertook to define what constituted the waters of Puget Sound, and then again in 1873 and again in 1890. They defined Puget Sound as all those waters that flowed out through the Straits of San Juan de Fuca. As a matter of fact, all the water flows out through the Straits of San Juan de Fuca from a point about 10 miles south of Seymour Narrows. These Narrows are well named, because it would be impossible for the tide waters to flow north from the Gulf of Georgia. These waters all come within the legislation of this state regulating trap fishing. Judge Hanford, when I called

the matter to his attention said, while he believed the different waters of Puget Sound undoubtedly included those waters - he was shown then that these parties did not have time to remove those traps, - and inasmuch as they were solvent he would not pass on that phase of the question. But if the State laws are enforced here, so far as my clients are concerned, they could not be entirely shut off from the reef. There would be at least 2 gaps in there (the long trap), and that would give them a chance. They could not shut off the run of salmon entirely. (These red lines were sketched on the chart by the Indians. This map was made by the Alaska Packers' Association).

Q. Were all these outer lines of traps worked last year? They are not being worked now.

A. I think they were all worked last year, every one of them. These two traps (referring to map) I am not sure, but I think they started to work them last year and subsequently took up

that one and located it over here. What we undertook to show was that they could remove that trap and put it back on the reef, and that would preserve the rights of the Indians over there, but the Indians, up to the time Mr. Elwood came over here, have been fishing diligently there, and they have not caught a salmon on that reef. Mr. Elwood, (in the early days) has paid them as high as \$25,000 a year for salmon caught on that reef.

I have known them (Indians) over here at Village Point, with a single net to catch at one run of the tide, 3200 salmon. There is just a small reef at Village Point where they work about 6 or 7 nets. The trap fishing has begun at Village Point, and the court refused to dissolve the injunction against them.

Q. Where are the trap nets there?

A. They located a trap right on the edge of the reef so as to shut the Indians off the

reef at that point, and now they are trying to drive piles and locate a net so as to shut off the Indians entirely.

Q. What is the condition of Point Roberts? That has been a military reservation.

A. It is still a military reservation, at least they have not sold it, and, as I understand it there are only 2 claims on the Point where the parties have acquired title yet; in fact, where the canneries are located. That property was located by John Waller in 1879 or 1880. He first filed on part of the property and he subsequently obtained a receiver's receipt on it, and a couple of years after he abandoned a part of it, and filed on the property clear down to the Point, and his second filing covered but 2 right where the canneries stand. His first filing did not cover them. Waller obtained a receiver's receipt for the property, but the patent was never issued. A protest was sent in to the Department protesting against the granting of the title to Waller

or his widow, inless the patent showed the easement the Indians had on that Point.

Our Territorial Supreme Court in the case of Taylor vs. the United States, 2d Washington Territory, in a case involving the same treaty that we have involved in this litigation, where a man by the name of Taylor undertook to obtain title to 100 acres of land abutting on the Tumwater fishery on the Columbia River. He did obtain a patent from the Government, and then fenced the land up and shut the Indians off, and our Supreme Court held that the land at the time Taylor entered it was charged with an easement in favor of the Indians, and that they should be allowed to take fish in there at the customary place in the waters of the state and maintain upon the land their houses and buildings for curing and drying their fish, and the finding was that they occupied this land prior to the time Taylor entered it, prior to the time

of the patent, and that Taylor took it with the easement in favor of the Indians, and they allowed the Indians that fishery and to locate their houses, and on that point (Point Roberts) there were as many as 200 or 300 shacks built on the point for years; built there prior to the time that Waller went upon the Point. After he had started in there he went over there in the winter when the Indians were not there and destroyed all their racks.

Q. Where did Waller come from?

A. I don't know I am sure. My contention in this litigation in the Federal court is that these Indians have under that treaty a right to maintain their houses and their landing places there and ground upon which they can erect their racks for drying fish. That treaty was negotiated by Governor Stevens as Indian Commissioner. He was Governor of this state and ex officio Indian Commissioner. You will find it in the volume of 1873, Indian Treaties, entered into

by the United States and the Duwamish Indians and other allied tribes.

I think it (Point Roberts) was abandoned as a military reservation, but for some reason they withheld it from settlement. It has been surveyed, but they have withheld it for some reason. The right of taking fish at usual and customary grounds is further secured to the Indians, in common with all the citizens of the territory, and of erecting temporary houses for the purpose of curing them, together with the privilege of hunting and gathering nuts and berries on that point and the unclaimed land, provided, however, that they shall not take any shell fish from any beds cultivated by citizens. The treaty was negotiated in 1855, and was reviewed by the Senate of the U.S., and proclaimed April 15, 1859. You will find it in the volume of Indian Treaties published by the U.S. in 1873, page 378.

There is another old fellow over at Point Roberts, who located on some lots on the other side of the point. His name is Horace Brewster. He has some land on the Point. I do not think he has a patent yet, but he has a receiver's receipt and has occupied it for the last 10 or 12 years. I think the Alaska Packers' Association have a lease from him for 40 acres abutting on the water front opposite their traps.

Q. I understand the Light House Board have a reserve on the southwest corner of the point.

A. I think that is right.

Q. You do not know how much of a reservation they have there?

A. I do not know I am sure.

Q. Because I know other places where fisheries have been carried on adjacent to the Light House reserves the Board has obliged them to give up fishing.

A. I went down to the legislature last winter and prepared a bill that would protect t

these  
~~the~~ Indians. At least I prepared certain amendments to the bill, that would have shut off the monopoly established by the Alaska Packers' Association, and it passed the house without a dissenting vote. Our Senator from this county, Mr. Dorr, was the attorney for the A'P'A'. and when it entered the Senate it was killed. The A.P.A. maintained a lobby there through the entire session. The bill was prepared by Goodfellow.

Q. Where canaa printed copy of that bill be obtained?

A. I may possibly have a printed copy here. The bill as it passed the house provided that the State Fish Commissioner should not issue a license for the location of any trap, and no trap or other fixed appliance taking salmon in the waters of the state, etc., should be located within 5,000 feet of any reef where the Indians of the state sustaining treaty relations with the United States had heretofore taken salmon with hand or reef nets. Briefly, that was the

provision as far as the Indians were concerned. Now, the provision as far as the trap fishing was concerned restricted the number of traps to be operated by any one company. Our present statute restricts it to 3, and they are maintaining 12 or 14 over there because they claim they are not within the definition of Puget Sound; but I think that bill restricted the number of traps operated by any one concern to one. It was very stringent; too stringent.

Q. How shall we designate the bill? Does it go under any particular name?

A. I was trying to think who introduced it. The bill was prepared by Black and Leaming, and I think it is the Biggs Fish Bill. But I could get you a copy of it at Whatcom. I know that Black and Leaming, in the Bellingham Bank building, have a copy of it. That was the only bill that was introduced that undertook to regulate trap fishing.

Q. How would it do to send to Olympia for such bills, or would it be difficult to get them except in printed statutes?

A. The Secretary of State would give you whatever you wanted, I am satisfied of that. All the fish legislation of this state, when it is construed in pari materia, all through, in other words, would settle the question forever it seems to me as to the fact that Point Roberts comes within the legislation of the State of Washington, and that our lower court here in passing on the matter, simply guessed at it.

Q. Of course, so far as fishery laws are concerned, they belong to the state, and always have; and the Indian rights have been guaranteed by the Federal Government, and of course they come under it.

A. I would like to see trap fishing abolished here as it is in British Columbia. As far as the Alaska Packers' Association is concerned, it takes from the waters of this country one of

her most valuable products. It is a San Francisco corporation. The stock is owned by California and English people, and they buy all their supplies in San Francisco. They, as you observed in their canneries, employ a good many chinamen and some Indians, and they distribute absolutely nothing, or next to nothing in this county, or in the state, and there is not a dollar of the product that is taken away that does the people of this section any good, with the exception of 4 or 5 stockholders. Mr. Drysdale is a stockholder, but he is not a citizen. He came over here from Westminster and has taken out his first papers, although I do not know as that has anything to do with the question, as he is a resident and has as much right to perpetuate a monopoly as anybody on that point, if he can do it. He belongs to San Francisco now.

Q. Wadhams, of course, is located in Blaine?

A. Well, Wadhams' property passed into the control of that trust and he interested as a

stockholder, as I understand it, or in some way.

The Alaska Packers' Association intend to absorb that point and they intend to shut the Indians out of there, and they drove them off that reef last year with rifles and would not let them land their canoes. The only place they can land their canoes with any safety is back of the canneries. Elwood can tell you more about Point Roberts than anybody. He began in 1873, and traded with the Indians there and bought salmon and put them up in various ways, and he knows every man that has ever lived around the Point.

EXTRACTS FROM ELWOOD'S DEPOSITION AS  
DICTATED BY MR. McCORD.

Up to 1891 he resided at Semiahmoo, near Blaine. Point Roberts and Village Point were the two ancient fisheries of the Indians.

(Then he tells about the manner in which they attempted their location on that point for fishing and he names a lot of these Indians with whom he has traded for the last 22 years.)

In 1873 and 1874 I began trading with the Indians, buying from them the sockeye salmon taken each year at Point Roberts. . . . Then there was but one cannery in British Columbia. I was the first American, or white man on the American side of the boundary who began packing salmon. During 1875 and 1876 I made my residence at Point Roberts. During all the years I have known this reef the run of salmon is varied. There would be a good run for two years, and it

would fall off until the 4th year the run was almost a failure. Since 1875 I have known as many as 250 Indians fishing at this Point. Since I have known this Point a large number of Indians have annually fished here, but sometimes only half of the fishermen have been Indians. (Then he goes into a description of the reef and describes the clam shell beds over there and the burying ground at the Point. Then he goes on to state that he remembers when Waller came there and located, and how he changed his filings, and finally tore down the shacks and the appliances for drying salmon that the Indians had on the Point. Waller came to the Point 2 or 3 years after he began trading there and resided there. The white men fished when they were at the Point, with gill nets and purse seines. The Indians have always fished reef nets. Then he goes on to show the cost of maintaining traps, and that the Indians have no knowledge of trap fishing, and that they are not able to equip themselves with traps, etc.

Then he goes into a description of the line of traps located over there, and states the names of a large number of old citizens, residents who are familiar with the Point).